

Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

IB Docket No. 96-111

Amendment of the Commission's Regulatory)
Policies to Allow Non-U.S.-Licensed Space)
Stations to Provide Domestic and International)
Satellite Services In the United States)

and)

Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only Earth)
Stations)

CC Docket No. 93-23
RM-7931

and)

COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules as it Applies to)
Services Provided via the Intelsat K Satellite)

File No. ISP-92-007

To: The Commission

REPLY COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby replies to comments filed on August 21, 1997 concerning the Commission's Further Notice of Proposed Rule Making ("Further Notice") in the above-captioned proceeding.^{1/} Because many points of general agreement have emerged concerning both policies to access the space segment capacity of non-U.S. satellite

^{1/} See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services In the United States, FCC 97-252, slip op. (released July 18, 1997).

systems and the procedures to be used to consider such requests, Columbia limits its reply comments those areas where there remains significant disparity in views — particularly the treatment of intergovernmental satellite organizations (“IGOs”), *i.e.*, Intelsat and Inmarsat, and new private affiliates spun off from these entities.

DISCUSSION

1. Determination of New Market Access Opportunities For IGOs And Their Affiliates Must Follow Restructuring Of These Entities.

As in the initial comments in this proceeding, the overwhelming majority of participants oppose diversion of IGO space segment resources for provision of U.S. domestic service absent satisfactory resolution of the current efforts to achieve pro-competitive restructuring and privatization of both Intelsat and Inmarsat.^{2/} As observed by the Commission and a number of the commenters, the IGOs themselves are not covered by the WTO Agreement, and the United States has made specific commitments not to grant market access to a future privatized IGO “affiliate, subsidiary, or other form of spin-off” unless the resulting entity is fully consistent with U.S. law and policy with respect to fair competition.^{3/} Because the privatization process has not yet run its course, Columbia agrees with other parties suggesting that these issues are appropriate for consideration in a separate proceeding.^{4/} While there is a need to finalize procedures for the handling of access requests from WTO-member nations prior to the WTO Agreement’s January 1998 implementation deadline, no such time constraint impinges on the decisionmaking process

^{2/} See Columbia Comments at 2-4; GE Americom Comments at 6; Loral Comments at 10-14; Orion Comments at 9-10; PanAmSat Comments at 6.

^{3/} See Further Notice at ¶ 32; Columbia Comments at 4; GE Americom Comments at 6; Loral Comments at 12; Orion Comments at 10; PanAmSat Comments at 7.

^{4/} See GE Americom Comments at 6; Loral Comments at 10 *et seq.*; Orion Comments at 7-8.

with respect to treatment of the IGOs. Indeed, as noted, because Intelsat and Inmarsat have not yet determined when or how to restructure themselves, critical facts necessary to evaluate how these entities should be treated are unlikely even to be known until mid-1998, at the earliest.

Comsat nonetheless insists in its comments that it should be permitted to offer U.S. domestic service immediately using Intelsat and Inmarsat capacity because many members of the two IGOs made market opening concessions in the WTO negotiations (*see* Comsat Comments at 9-12), and because it is a U.S. company that was mandated by Congress to invest in the IGO satellite systems and should be permitted to exploit this investment as it sees fit (*see* Comsat Comments at 12-13). These insubstantial arguments simply ignore the real issue central to any effort to convert IGO capacity for domestic use — the ability of Comsat to exploit the IGOs' unique status and global reach for competitive advantage.

Despite Comsat's effort to portray itself as just another company endeavoring to compete in the marketplace, Comsat is an unmistakably unique entity by virtue of its exclusive access to the global fixed- and mobile-satellite service capacity controlled by Intelsat and Inmarsat, entities with market-dominant affiliates throughout the world. For this reason, Columbia actually agrees with Comsat that direct application of the ECO-Sat test to Intelsat and Inmarsat is inappropriate. *See* Comsat Comments at 4. As these entities are currently structured, application of a "home market" test is unworkable for entities that could be construed to have as many as 141 "home" markets. *See Further Notice* at ¶ 31.

It is simply ludicrous, however, for Comsat to suggest that use of IGO capacity should be subject to the same presumption applied to WTO member nations — that access would serve the public interest and promote competition. *See* Comsat Comments at 9. Distinct from even those companies with government-favored or otherwise market-dominant positions in a single

market, the IGOs have long been accorded internationally-supported hegemony over the global satellite marketplace supported by special privileges and immunities that are secured by treaty. Yet even to the extent that market access alone is a significant element of the IGOs' power, Comsat's observation that many IGO members are part of the WTO is countered by the fact that a significant number of countries that are IGO members are not part of the WTO and have made no commitments to open their markets. Accordingly, the WTO Agreement does little by itself to support unfettered use of IGO capacity to provide service not within the primary scope of these entities' missions.

More fundamentally, however, the issue of market openness is secondary where Intelsat and Inmarsat are concerned. The most significant issue is not each IGO's ability to distort competition along a single market route, but its overall capability to distort competition globally by means of its privileged status and broad power in many markets. The unique character of these organizations was established to meet the increasing need for international satellite connectivity that the private sector was not yet prepared to meet. Today, the global satellite marketplace is dramatically different than it was 35 years ago, when Intelsat was created, or even two decades ago, when Inmarsat came into being. These changes call for an adjustment in the nature and role of these organizations, so that they do not impinge on the growth of private sector satellite networks, and so that the services begun under the auspices of the IGOs can successfully adapt to full competition. Until such fundamental modifications can be effected with respect to the IGOs' special privileges and immunities, it would be inappropriate to allow Intelsat and Inmarsat capacity to be offered in already competitive markets in which the leverage that the IGOs possess could be used to undermine competition instead of fostering it.

Finally, Comsat's highlighting of its status as a U.S. company that has invested in the IGOs under a mandate from Congress (*see* Comsat Comments at 12) is of no relevance to the issue of using this capacity to provide domestic service. The mandate from Congress was for the purpose of establishing global, transoceanic satellite connections, and all of Comsat's investments were made with this understanding. Comsat is not losing any benefit of its investment because it is not permitted to offer U.S. domestic service. Indeed, it is guaranteed maximal return on its investment because of its monopoly access to Intelsat capacity within the United States and the high rates that Intelsat charges for its service, which guarantee Comsat a high return on its investment.

2. The Commission Should Not Exempt Particular Services From Application Of The ECO-Sat Test.

As a general proposition, Columbia believes it would be unwise to carve out specific exemptions from the ECO-Sat test applied to non-WTO entities, as such an approach would undermine the efficacy of the standard as a market opening policy. Under such an approach, many classes of users would be inclined to seek special treatment as a means of increasing their range of service options.

Although several of the broadcast networks argue for an exemption from ECO-Sat requirements with respect to international video transmissions, they have not made a sufficient case to warrant *per se* exclusion of this service from application of the ECO-Sat analysis. Columbia acknowledges the significant importance of facilitating newsgathering, but it continues to believe that the need expressed by the networks to ensure the availability of transmission capacity can best be met by considering the lack of alternatives as part of the general public interest inquiry of which

the ECO-Sat test is a part. Short-term expedience should not dissuade the Commission from applying the ECO-Sat test to all types of service in a fair and even-handed manner.

Only in special circumstances, where it is demonstrated that no other options are available, should the need to transmit news video over-ride the failure of a foreign administration to provide effective competitive opportunities.^{5/} But these decisions should be made as part of the ECO-Sat process, and not separate from it. To do otherwise would be capitulating to protectionist regimes that have limited access to their markets.

3. The Commission Should Require Licenses For Receive-Only Earth Stations That Would Access Intelsat K Or Other Capacity To Be Used For Provision Of "Non-Core" Intelsat Services.

In the Further Notice, the Commission sought comment on whether Intelsat K satellites should remain exempt from receive-only earth station licensing, despite the fact that the Commission intends to require licenses for all other ground facilities accessing non-U.S. satellites.^{6/} Hughes Electronics Corp. and PanAmSat have filed comments supporting licensing for Intelsat K earth stations.^{7/} Columbia concurs with these commenters. The Commission has made a determination to license facilities making use of non-U.S. capacity for purposes of ensuring compliance with its technical requirements and competitive policies, and Intelsat should be subject to this requirement to the extent that it engages in provision of any services outside of its core functions, including the direct-to-home video services offered via Intelsat K.

^{5/} As Columbia indicated in its initial reply comments in this proceeding, the Commission already has in place regulatory mechanisms that can permit temporary use of capacity to address emergency situations. See Columbia Reply Comments at 7 n.17 (filed August 16, 1997).

^{6/} See Further Notice at ¶ 58.

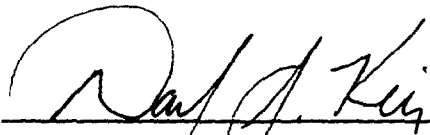
^{7/} See Hughes Comments at 23; PanAmSat Comments at 9.

III. CONCLUSION

For the foregoing reasons, Columbia urges the Commission to adopt the broad framework proposed in the Further Notice with the modifications and clarifications proposed by Columbia in its earlier comments in this docket. The Commission should not at this time permit Intelsat or Inmarsat capacity to be used to provide U.S. domestic service prior to completion of efforts to reform and restructure these entities. In addition, the Commission should not adopt *per se* exemptions from application of the ECO-Sat test, but should consider any arguments that might over-ride a failure to satisfy the ECO-Sat test in the context of individual applications, premised on the particular circumstances presented. Finally, the Commission should require receive-only earth station licenses for access to Intelsat K or to provide other "non-core" Intelsat services.

Respectfully submitted,

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September 5, 1996

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CERTIFICATE OF SERVICE

I, Vera Strong, do hereby certify that true and correct copies of the foregoing "Reply Comments of Columbia Communications Corporation" were mailed, first-class postage prepaid, this 5th day of September, 1997 to the following:

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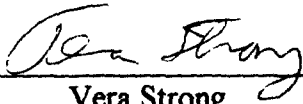
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